



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Harry Olson  
**File:** B-224600  
**Date:** October 8, 1986

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### **DIGEST**

An individual claims a day's pay for the time he spent filling out personnel forms in furtherance of his application for a position of employment with a Federal agency. After completing the initial processing at the personnel office, the claimant declined the offer of employment and departed the facility without ever having engaged in the performance of the duties of the position. His claim may not be paid since it is fundamental that rights to compensation under the civil service laws do not accrue to a person who has been offered an appointment to a position until that person attains the status of a Federal employee by accepting the appointment and entering on duty.

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### **DECISION**

This action is in response to an appeal of a settlement by our Claims Group denying Mr. Harry Olson's claim for compensation relating to an application he submitted for employment with the United States Navy. We sustain the action of our Claims Group.

### **BACKGROUND**

According to the Navy's administrative report in this matter, in January 1985 Mr. Harry Olson was made a verbal offer of employment as a Mechanical Engineer, GS-830-11, with the Navy Air Systems Command, Weapons Support Directorate, Pacific Missile Test Center, Point Mugu, California. This offer was made after several visits with the supervisor of the position who had indicated that appointment to Mr. Olson's highest previous General Schedule grade and step level would be authorized in light of Mr. Olson's previous Federal employment. The supervisor apparently was under the impression that his previous Federal employment had been at the highest step of the GS-11 grade level.

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Based upon these discussions, the Weapons Support Directorate prepared a memorandum which was transmitted to the Point Mugu Civilian Personnel Office (CPO), authorizing appointment of Mr. Olson at grade GS-11 up to the within-grade step 10 pay rate, in connection with the offer of employment. A staffing clerk in the CPO made the verbal offer of employment at the grade GS-11, step 10 level to Mr. Olson based upon this memorandum. Mr. Olson accepted the offer with an agreed upon starting date of May 13, 1985.

On May 13, 1985, Mr. Olson reported to the CPO to begin in-processing procedures, and at that time it was first determined that Mr. Olson's highest previous Federal civil service rate was grade GS-11, step 1. Mr. Olson was advised at that time that his salary would not be set above grade GS-11, step 1.

Mr. Olson then completed his initial in-processing and proceeded to his work area where he indicated that he did not wish to engage in the duties of his position until he knew conclusively what his salary would be. He was informed by his supervisor and the Administrative Officer of the Weapons Support Directorate that he would not be paid above GS-11, step 1. At that point, before engaging in any of the duties of his position, Mr. Olson stated that unless he were given a salary at the 10th step of grade GS-11 he did not accept the offer of employment and did not consider himself employed. He then returned to the CPO where he again stated that he would not accept the offer of employment and did not consider himself employed at grade GS-11, step 1, and was again informed that his salary would not be set above GS-11, step 1. Mr. Olson then departed the facility. In a written statement dated May 17, 1985, to the concerned Navy officials, Mr. Olson stated that he did not consider himself employed and did not wish to be paid for May 13, 1985.

In a subsequent letter to the Deputy Commander of the facility dated October 19, 1985, Mr. Olson alleged that he was offered a day's pay for the time he had spent in-processing and stated further that he had "changed his mind" and wished to be paid notwithstanding his written statement of May 17, 1985.

Upon these facts, our Claims Group determined that Mr. Olson was not entitled to any compensation for the time spent in-processing on May 13, 1985. It is from this determination that Mr. Olson now appeals.

## DISCUSSION

Provisions of law governing the appointment of persons to positions of employment in the civil service of the Federal Government, and the compensation of such persons, are contained in title 5 of the United States Code. It is fundamental that rights to compensation under these civil service laws do not accrue to a person who has been offered an appointment to a position until that person attains the status of a Federal employee by accepting the appointment and entering on duty. See, generally, 20 Comp. Gen. 267, 269 (1940).

Specifically, the definition of "employee" for purposes of title 5, United States Code, is found in 5 U.S.C. § 2105(a) which states:

"(a) \* \* \* 'employee' \* \* \* means an officer and an individual who is--

"(1) appointed in the civil service by [an authorized Federal employee or officer], \* \* \*

"(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

"(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position."

As to this definition, the Federal courts have held that " \* \* \* there are three elements to the definition-- appointment by an authorized Federal employee or officer, performance of a Federal function, and supervision by a Federal employee--and that they are cumulative. A person must satisfy each requirement." Costner v. United States, 229 Ct. Cl. 87, 93, 665 F.2d 1016, 1020 (1981).

In the present case, while the actions of the CPO may well have resulted in Mr. Olson's being appointed, it is clear that he never engaged in the performance of a federal function under the supervision of a Federal employee, since he never actually engaged in the duties of his position. Thus, Mr. Olson never fulfilled the second and third essential elements of the definition of employee. We note that this distinction between being an appointee versus being an employee has been clearly recognized by the courts. McCarley v. Merit Systems Protection Board, 757 F.2d 278

(Fed. Cir. 1985); National Treasury Employees Union v. Reagan, 663 F.2d 239 (D.C. Cir. 1981). In the final analysis, Mr. Olson never attained the status of a Federal employee, and he may not receive payment for any preliminary time he devoted to in-processing activities that did not entail an entrance on duty and the performance of work since "[s]uch payment for work he did not perform \* \* \* would be illegal." McCarley, supra, 757 F.2d at page 280.

As to the assurances Mr. Olson says were made by Navy officials that he would receive a day's pay for his activities on May 13, 1985, and as to the other erroneous information he says he received from them, it is well established that the Government is not bound by the erroneous acts or advice of its officers, agents, or employees, even though committed in the course of their official duties. National Treasury Employees Union v. Reagan, supra, 663 F.2d at page 249.

Accordingly, the settlement of our Claims Group is sustained and the claim of Mr. Olson is denied.

*for* Harry R. Van Cleave  
Comptroller General  
of the United States